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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/388,069	09/01/1999	STEPHEN LEROY POLLARD		3357

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EXAMINER	
DANG, HUNG XUAN	

ART UNIT	PAPER NUMBER
2873	

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/388,069	Applicant(s) POLLARD, STEPHEN LEROY	
	Examiner Hung X. Dang	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The amendment filed on 1/18/05 has been entered.
2. The amendment filed 1/18/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The original disclosure does not support for "integrally attached side bands extending outward from at each side of said expansion loop, each side band being attached to said expansion loop at its upper end at said split and terminating in a free distal end." as recited in claim 7.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claims Rejection Under 35 USC – 112-1st Paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 7-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not described the claimed invention as recited in new claims 7-9.

Specially in claim 7, lines 7-9, "integrally attached side bands extending outward from at each side of said expansion loop, each side band being attached to said expansion loop at its upper end at said split and terminating in a free distal end."

Claims Rejection Under 35 USC - 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Chang et al** (5,920,371) in view of **Leonardi et al** (5,642,178).

Chang et al discloses versatile headband optical mounted assembly which comprises a eyeglass frame (14) mounted on the headband (106), wherein the headband includes a vertical support band (110) with an adjustable loops, and a single strap (108) which fits around a wearer's head (see figure 1 and the related disclosure).

Chang et al does not explicitly states that when pressure is applied to the band, the band will expand and when pressure is removed from the band, the band will return to its original position.

Leonardi et al, however, discloses headband (18) includes a vertical support band (92) made of an elastic material with an adjustable loops, and a strap (90) also

made of an elastic material which fits around a wearer's head (see figure 2 and the related disclosure) because both bands made of the elastic material therefore when pressure is applied to the band, the band will expand and when pressure is removed from the band, the band will return to its original position.

The headband are made of elastic material are well known in the art of headband for the purpose of providing comfortable for the wearer at the point where the headband contacts a wearer's head and/or for fitting individual of the wearer. Therefore, it would have been obvious to one skilled in the art to make the headband, of the Chang et al, elastic material for the purpose of providing comfortable for the wearer at the point where the headband contacts a wearer's head and/or for fitting individual of the wearer.

Response To Applicant's Argument

5. Applicant's arguments filed 1/18/05 have been fully considered but they are not persuasive.

Applicant argued that "Neither Chang et al or Leonardi disclose or suggest as per claim 7 side bands in conjunction with the expansion loop over the top of the head to allow the wearer to easily manually adjust. Further, the cited prior art discloses or suggests the structure recited in claims 8 and 9." This argument is not persuasive because this limitation is considered new matter as stated in 35 U.S.C. 112 1st Paragraph above. Therefore the claimed invention still does not distinguish over Chang et al and Leonardi.

6. Applicant's arguments with respect to claims 7-9 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (571) 272-2326.


Hung Xuan Dang
Primary Examiner